Filed 3/1/10 Allen v. Reifman CA2/7

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

STANLEY FRANKLIN ALLEN, Plaintiff and Appellant, v. IRVING REIFMAN et al., Defendants and Respondents.	B212850 (Los Angeles County Super. Ct. No. BC388894)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert L. Hess, Judge. Affirmed.

Stanley Franklin Allen, in pro. per., for Plaintiff and Appellant.

Law Office of Fern S. Nisen and Fern S. Nisen for Irving Reifman and Morris Mainstain, Defendants and Respondents.

Stanley Franklin Allen, appearing in propria persona in this court as he did in the trial court, purports to appeal from the judgment of dismissal entered in favor of Irving Reifman and Morris Mainstain after the trial court sustained without leave to amend Reifman and Mainstain's demurrer to Allen's amended complaint for fraud and to quiet title. Rather than address the merits of the trial court's ruling or the elements of the cause of action he attempted to assert against Reifman and Mainstain, Allen's appellate briefs focus exclusively on his claim a fraud was perpetrated in connection with an earlier partition action, *Ingrid Allen v. William C. Allen et al.*, Los Angeles Superior Court No. BC298286 (the partition action)—a matter in which it was determined Allen was not a party and had no standing. Because Allen has failed to present any argument the trial court erred in sustaining the demurrer or to suggest in what manner his complaint might be amended to properly state a cause of action, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND[1]

Ingrid Allen initiated the partition action on July 1, 2003 with respect to a multi-unit residential property located at 2949 Raymond Avenue, Los Angeles, following the deaths of several of the property's co-owners. Allen, who apparently is a first cousin of Ingrid Allen and was a tenant at the Raymond Avenue property, was not identified as an owner on the deed submitted in the partition action and was not named a party to the action. The law firm of Reifman & Altman represented the partition referee; Mainstain, an attorney with the firm, was counsel of record. On December 9, 2004 the trial court entered an order confirming the sale of the property. On April 4, 2005 the court confirmed the partition and approved the final report of the partition referee.

On December 10, 2004, the day after the trial court confirmed the sale of the property, Altman filed a notice of appeal. The appeal was dismissed by the Court of

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[1] Among its many deficiencies, Allen's opening brief fails to include "a summary of the significant facts limited to matters in the record," as required by California Rules of Court, rule 8.204(a)(2)(C). Our description of the factual and procedural background of the appeal, accordingly, is based on our own review of the record and the historical synopsis and statement of facts contained in Reifman and Mainstain's respondents' brief.

Appeal on its own motion, "as [appellant] Stanley F. Allen having not been a party to the cause of action in the trial court and not being an interested person as defined by Probate Code sec[tion] 48 lacks standing to appeal from the judgment of the trial court. [Citations.]" (*Allen v. Allen* (Jan. 12, 2005, B180193) [nonpub. order].).

In 2004 Allen filed a civil action (*Stanley F. Allen v. Ingrid Allen*, Los Angeles Superior Court No. BC32544), naming 15 defendants, including Reifman and Mainstain, alleging emotional distress and personal injury claims arising from the partition action.[2] The action was dismissed by the court as to Reifman and Mainstain in February 2006 after Allen failed to effect service of process on them.

Allen filed the unverified complaint in the current action on April 11, 2008 and an unverified amended complaint on August 15, 2008, naming more than two dozen defendants (including each of the attorneys who had appeared in the partition action and all the trial court and appellate judges involved in any way in the case).[3] The amended complaint, characterized by Allen as an action for fraud and to quiet title, alleged that he was the true owner of the Raymond Avenue property and that the various defendants were aware of his interest in the property and knowingly failed to include him as a party in the partition action. Reifman and Mainstain are identified as defendants in the caption of the pleading but are not mentioned in the body of the five-page amended complaint. However, one of the many subsidiary "pleadings" attached to the amended complaint asserted Reifman and Mainstain should be "charged with malpractice" because they purportedly made false statements to the court during their representation of the partition

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[2] On April 7, 2005 the trial court found Allen's personal injury action and the partition action were not related cases, explaining: "Stanley Allen was not a party to case BC298286 [the partition action]. Stanley Allen's causes of action are for personal injuries not related to division of property. The partition action is completed and the parties are not the same. The Court of Appeal has already ruled that Stanley Allen was not a party to the partition action."

[3] Although Allen served Reifman and Mainstain, it appears he failed to serve any of the other defendants named in the action.

referee. Nowhere in the pleading itself or any of its attachments is there any other allegation relating to Reifman or Mainstain that could be construed as part of a claim for fraud or an action to quiet title.

Reifman and Mainstain demurred and moved to strike the amended complaint, arguing there was no attorney-client relationship between Allen, on the one hand, and Reifman and Mainstain, on the other hand, thus precluding any claim by Allen for legal malpractice and also arguing any cause of action by Allen was barred by the litigation privilege, the applicable statute of limitations and the doctrine of res judicata. At the hearing on the demurrers on October 15, 2008, Allen attempted to discuss the merits of the partition action itself and his entitlement to be included as a party to that action, rather than his purported claim against Reifman and Mainstain. At one point Allen stated he had served Reifman and Mainstain only because the trial court had instructed him to do so. The court responded, "The reason you had to serve the attorneys is that you chose to name them as defendants in the caption of your amended complaint. That is why you had to do it. If you did not intend them to be parties, then there was no reason . . . for you to name them in the caption in the pleading . . . ."

The court sustained the demurrers without leave to amend, explaining, "I do not see that any of your complaints have stated a claim against defendants Reifman and Mainstain, and I have no idea what you could possibly allege that would state a claim against them." Noting it had reviewed not only the amended complaint filed August 15, 2008 but also a purported second amended complaint, dated October 6, 2008, which had been filed without leave of court, the court also stated, "The purported Amended Complaint filed 10-6-08 does not suggest any possibility of successfully amending nor does the court's attempt to elicit information from Mr. Allen."

Allen filed a motion for reconsideration. The court denied the motion "because there is no basis for reconsideration within the meaning of Code of Civil Procedure section 1008." A judgment of dismissal was entered November 3, 2008. Notice of entry

of judgment was served and filed on December 1, 2008. Allen filed a timely notice of appeal.

DISCUSSION

Allen's appellate briefs do not address the merits of the trial court's decision sustaining Reifman and Mainstain's demurrers or its order dismissing the instant action as to them—the only matters properly before this court. Rather, Allen once again insists Ingrid Allen and her attorney intentionally lied to the trial court in the partition action, fraudulently claimed an interest in the Raymond Avenue property and improperly precluded Allen's participation in that case. Allen asks this court to set aside the partition and sale of the Raymond Avenue property, not to reverse the trial court's dismissal of his action against Reifman and Mainstain. Having failed to adequately raise or support any issue that relates to his purported claim for legal malpractice (or fraud) against Reifman and Mainstain, Allen has forfeited any challenge to the dismissal of his action. (See *Paulus v. Bob Lynch Ford, Inc*. (2006) 139 Cal.App.4th 659, 685 ["[c]ourts will ordinarily treat the appellant's failure to raise an issue in his or her opening brief as a waiver of that challenge"]; *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466 [issues not properly raised in appellant's brief are deemed forfeited or abandoned]; *Christoff v. Union Pacific Railroad Co.* (2005) 134 Cal.App.4th 118, 125 ["an appellant's failure to discuss an issue in its opening brief forfeits the issue on appeal"].)

In any event, a key element of any action for legal malpractice is the establishment of a duty by the lawyer to the claimant to use such skill, prudence and diligence as members of his or her profession commonly possess and exercise. (*Coscia v. McKenna & Cuneo* (2001) 25 Cal.4th 1194, 1199; *Chang v. Lederman* (2009) 172 Cal.App.4th 67, 76.) Absent duty, there can be no breach and no negligence. (*Moore v. Anderson Zeigler Disharoon Gallagher & Gray* (2003) 109 Cal.App.4th 1287, 1294; *Chang,* at p. 76.) In his amended complaint (read together with its various attachments), Allen acknowledges Reifman and Mainstain acted only as the attorneys for the court-appointed partition referee. With rare exceptions plainly not applicable to Reifman and Mainstain in their

capacity as counsel for the partition referee, an attorney owes no duty to a claimant who is not a client or former client and cannot be held liable for professional negligence. (See *Chang*, at pp. 76-82.) Allen's amended complaint thus fails to plead facts sufficient to constitute a cause of action for legal malpractice against Reifman and Mainstain.[4]

With respect to any possible claims for fraud or to quiet title—the sole bases for the action as represented by Allen in the civil case information statement he filed in this court[5]—Allen has not alleged any misrepresentations were knowingly made by Reifman or Mainstain upon which he reasonably relied (see *Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1255 [defining elements of fraud]; *Small v. Fritz Companies, Inc*. (2003) 30 Cal.4th 167, 173 [same]); nor has he alleged Reifman or Mainstain asserted any adverse claim of right, title or interest in the Raymond Avenue property (see Code Civ. Proc., § 761.020 [defining elements of action to establish title against adverse interest]; *South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 740 ["[i]n an ordinary action to quiet title it is sufficient to allege in simple language that the plaintiff is the owner and in possession of the land and that the defendant claims an interest therein adverse to him"]). Allen has thus failed to plead facts sufficient to constitute any cause of action against Reifman and Mainstain.

"'Where the complaint is defective, "[i]n the furtherance of justice great liberality should be exercised in permitting a plaintiff to amend his [or her] complaint . . . ."'"

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[4] On appeal from an order dismissing an action after the sustaining of a demurrer, we independently review the pleading to determine whether the facts alleged state a cause of action under any possible legal theory. (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415; *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.) We give the complaint a reasonable interpretation, "treat[ing] the demurrer as admitting all material facts properly pleaded," but do not "assume the truth of contentions, deductions or conclusions of law." (*Aubry*, at p. 967; accord, *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.) We liberally construe the pleading with a view to substantial justice between the parties. (Code Civ. Proc., § 452; *Kotlar v. Hartford Fire Ins. Co.* (2000) 83 Cal.App.4th 1116, 1120.)

[5] The civil case cover sheet and case management statement filed by Allen in the superior court also characterized his lawsuit as one for fraud and to quiet title.

(*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 970-971.) Before allowing further amendments, however, we must determine whether the plaintiff has shown "in what manner he [or she] can amend [the] complaint and how that amendment will change the legal effect of [the] pleading." (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349; see *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081 ["plaintiff has the burden of proving that an amendment would cure the defect"].) "[L]eave to amend should *not* be granted where . . . amendment would be futile." (*Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 685.)

As discussed, Allen's appellate briefs do not address the merits of the trial court's ruling or the elements of the cause of action he attempted to assert against Reifman and Mainstain. Because Allen does not suggest any ability to cure the defects in his pleading (and, like the trial court, we have no idea what Allen could possible allege to state a viable claim against either attorney), we affirm the trial court's order sustaining the demurrers without leave to amend.

DISPOSITION

The judgment is affirmed. Reifman and Mainstain are to recover their costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J.

JACKSON, J.